

AG and M&I  
T.O. Draft 09/29-2004  
T.O. Draft 09/23-2004  
T.O. Draft 08/02-2004  
R.O. Final Delta Division Form 09/14-2004  
R.O. Delta Division Form 07/23-2004  
CVP-Wide Form 05/23-2004  
Delta Division  
Contract No.  
14-06-200-8018-LTR1

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Central Valley Project, California

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
AND  
WIDREN WATER DISTRICT  
PROVIDING FOR PROJECT WATER SERVICE  
FROM THE DELTA DIVISION

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6 AND  
7 WIDREN WATER DISTRICT  
8 PROVIDING FOR PROJECT WATER SERVICE  
9 FROM THE DELTA DIVISION

10 THIS CONTRACT, made this \_\_\_\_ day of \_\_\_\_\_, 2005, in pursuance  
11 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,  
12 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and  
13 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.  
14 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat.  
15 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all  
16 collectively hereinafter referred to as Federal Reclamation law, between THE UNITED STATES  
17 OF AMERICA, hereinafter referred to as the United States, and WIDREN WATER DISTRICT,  
18 hereinafter referred to as the Contractor, a public agency of the State of California, duly organized,  
19 existing, and acting pursuant to the laws thereof;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley  
23 Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for

24 flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and  
25 restoration, generation and distribution of electric energy, salinity control, navigation and other  
26 beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the  
27 San Joaquin River and their tributaries; and

28 [2<sup>nd</sup>] WHEREAS, the United States constructed the Delta-Mendota Canal and related  
29 facilities, which will be used in part for the furnishing of water to the Contractor pursuant to the  
30 terms of this Contract; and

31 [3<sup>rd</sup>] WHEREAS, the rights to Project Water were acquired by the United States pursuant  
32 to California law for operation of the Project; and

33 [4<sup>th</sup>] WHEREAS, the Contractor and the United States entered into Contract  
34 No. 14-06-200-8018, which established terms for the delivery to the Contractor of Project Water  
35 from the Delta Division Facilities from September 28, 1959, through February 28, 1995; and

36 [5<sup>th</sup>] WHEREAS, the Contractor and the United States have pursuant to subsection  
37 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into  
38 interim renewal contract(s) identified as Contract No(s). 14-06-200-8018-IR1, 14-06-200-8018-IR2,  
39 14-06-200-8018-IR3, 14-06-200-8018-IR4, 14-06-200-8018-IR5, 14-06-200-8018-IR6, 14-06-200-  
40 8018-IR7, and 14-06-200-8018-IR8, the current of which is hereinafter referred to as the Existing  
41 Contract, which provided for the continued water service to the Contractor from March 1, 1995,  
42 through February 28, 2006; and

43 [6<sup>th</sup>] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the  
44 Existing Contract following completion of appropriate environmental documentation, including a  
45 programmatic environmental impact statement (PEIS) pursuant to the National Environmental

46 Policy Act (NEPA) analyzing the direct and indirect impacts and benefits of implementing the  
47 CVPIA and the potential renewal of all existing contracts for Project Water; and

48 [7<sup>th</sup>] WHEREAS, the United States has completed the PEIS and all other appropriate  
49 environmental review necessary to provide for long-term renewal of the Existing Contract; and

50 [8<sup>th</sup>] WHEREAS, the Contractor has requested the long-term renewal of the Existing  
51 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of  
52 the State of California, for water service from the Project; and

53 [9<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all of  
54 its obligations under the Existing Contract; and

55 [10<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting  
56 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and  
57 beneficial use and/or has demonstrated projected future demand for water use such that the  
58 Contractor has the capability and expects to utilize fully for reasonable and beneficial use the  
59 quantity of Project Water to be made available to it pursuant to this Contract; and

60 [11<sup>th</sup>] WHEREAS, water obtained from the Project has been relied upon by urban and  
61 agricultural areas within California for more than 50 years, and is considered by the Contractor as  
62 an essential portion of its water supply; and

63 [12<sup>th</sup>] WHEREAS, the economies of regions within the Project, including the Contractor's,  
64 depend upon the continued availability of water, including water service from the Project; and

65 [13<sup>th</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and  
66 partnerships to pursue measures to improve water supply, water quality, and reliability of the  
67 Project for all Project purposes; and

68 [14<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to  
69 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment  
70 of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a  
71 reasonable balance among competing demands for use of Project Water; and to comply with all  
72 applicable environmental statutes, all consistent with the legal obligations of the United States  
73 relative to the Project; and

74 [15<sup>th</sup>] WHEREAS, the parties intend by this Contract to develop a more cooperative  
75 relationship in order to achieve their mutual goals; and

76 [15.1] WHEREAS, the Contractor has utilized or may utilize transfers, contract  
77 assignments, rescheduling and conveyance of Project Water and non-Project water under this  
78 Contract as tools to minimize the impacts of Conditions of Shortage and to maximize the beneficial  
79 use of water; and

80 [15.2] WHEREAS, the parties desire and intend that this Contract not provide a  
81 disincentive to the Contractor in continuing to carry out the beneficial activities set out in the  
82 Explanatory Recital immediately above; and

83 [16<sup>th</sup>] WHEREAS, the United States and the Contractor are willing to enter into this  
84 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

85 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein  
86 contained, it is hereby mutually agreed by the parties hereto as follows:

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DEFINITIONS

1. When used herein unless otherwise distinctly expressed, or manifestly incompatible with the intent of the parties as expressed in this Contract, the term:

(a) “Calendar Year” shall mean the period January 1 through December 31, both dates inclusive;

(b) “Charges” shall mean the payments required by Federal Reclamation law in addition to the Rates and Tiered Pricing Component specified in this Contract as determined annually by the Contracting Officer pursuant to this Contract;

(c) “Condition of Shortage” shall mean a condition respecting the Project during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the Contract Total;

(d) “Contracting Officer” shall mean the Secretary of the Interior’s duly authorized representative acting pursuant to this Contract or applicable Federal Reclamation law or regulation;

(e) “Contract Total” shall mean the maximum amount of water to which the Contractor is entitled under subdivision (a) of Article 3 of this Contract;

(f) “Contractor's Service Area” shall mean the area to which the Contractor is permitted to provide Project Water under this Contract as described in Exhibit “A” attached hereto, which may be modified from time to time in accordance with Article 35 of this Contract without amendment of this Contract;

(g) “CVPIA” shall mean the Central Valley Project Improvement Act, Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

109 (g.1) “Delta Division Facilities” shall mean those existing and future Project  
110 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to, the  
111 Tracy Pumping Plant, the O’Neill Pumping/Generating Plant, and the San Luis Reservoir, used to  
112 divert, store, and convey water to those Project Contractors entitled to receive water conveyed  
113 through the Delta-Mendota Canal;

114 (h) “Eligible Lands” shall mean all lands to which Irrigation Water may be  
115 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982 (96  
116 Stat. 1263), as amended, hereinafter referred to as RRA;

117 (i) “Excess Lands” shall mean all lands in excess of the limitations contained in  
118 Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal  
119 Reclamation law;

120 (j) “Full Cost Rate” shall mean an annual rate, as determined by the Contracting  
121 Officer that shall amortize the expenditures for construction properly allocable to the Project  
122 irrigation or M&I functions, as appropriate, of facilities in service including all O&M deficits  
123 funded, less payments, over such periods as may be required under Federal Reclamation law, or  
124 applicable contract provisions. Interest will accrue on both the construction expenditures and  
125 funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the date  
126 incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated in  
127 accordance with subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate includes actual  
128 operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules and  
129 Regulations for the RRA;

130 (k) "Ineligible Lands" shall mean all lands to which Irrigation Water may not be  
131 delivered in accordance with Section 204 of the RRA;

132 (l) "Irrigation Full Cost Water Rate" shall mean the Full Cost Rate applicable to  
133 the delivery of Irrigation Water;

134 (m) "Irrigation Water" shall mean water made available from the Project that is  
135 used primarily in the production of agricultural crops or livestock, including domestic use incidental  
136 thereto, and watering of livestock;

137 (n) "Landholder" shall mean a party that directly or indirectly owns or leases  
138 nonexempt land, as provided in 43 CFR 426.2;

139 (o) "Municipal and Industrial (M&I) Water" shall mean Project Water, other  
140 than Irrigation Water, made available to the Contractor. M&I Water shall include water used for  
141 human use and purposes such as the watering of landscaping or pasture for animals (e.g., horses)  
142 which are kept for personal enjoyment or water delivered to landholdings operated in units of less  
143 than five acres unless the Contractor establishes to the satisfaction of the Contracting Officer that  
144 the use of water delivered to any such landholding is a use described in subdivision (m) of this  
145 Article;

146 (p) "M&I Full Cost Water Rate" shall mean the Full Cost Rate applicable to the  
147 delivery of M&I Water;

148 (q) "Operation and Maintenance" or "O&M" shall mean normal and reasonable  
149 care, control, operation, repair, replacement (other than capital replacement), and maintenance of  
150 Project facilities;

151 (r) "Operating Non-Federal Entity" shall mean the entity, its successors or  
152 assigns, which has (have) the obligation to operate and maintain all or a portion of the Delta  
153 Division Facilities pursuant to written agreement(s) with the United States. When this Contract was  
154 entered into, the Operating Non-Federal Entity was the San Luis & Delta-Mendota Water Authority.

155 (s) "Project" shall mean the Central Valley Project owned by the United States  
156 and managed by the Department of the Interior, Bureau of Reclamation;

157 (t) "Project Contractors" shall mean all parties who have water service contracts  
158 for Project Water from the Project with the United States pursuant to Federal Reclamation law;

159 (u) "Project Water" shall mean all water that is developed, diverted, stored, or  
160 delivered by the Secretary in accordance with the statutes authorizing the Project and in accordance  
161 with the terms and conditions of water rights acquired pursuant to California law;

162 (v) "Rates" shall mean the payments determined annually by the Contracting  
163 Officer in accordance with the then current applicable water ratesetting policies for the Project, as  
164 described in subdivision (a) of Article 7 of this Contract;

165 (w) "Recent Historic Average" shall mean the most recent five-year average of  
166 the final forecast of Water Made Available to the Contractor pursuant to this Contract or its  
167 preceding contract(s);

168 (x) "Secretary" shall mean the Secretary of the Interior, a duly appointed  
169 successor, or an authorized representative acting pursuant to any authority of the Secretary and  
170 through any agency of the Department of the Interior;

171 (y) "Tiered Pricing Component" shall be the incremental amount to be paid for  
172 each acre-foot of Water Delivered as described in subdivision (j) of Article 7 of this Contract;

173 (z) "Water Delivered" or "Delivered Water" shall mean Project Water diverted  
174 for use by the Contractor at the point(s) of delivery approved by the Contracting Officer;

175 (aa) "Water Made Available" shall mean the estimated amount of Project Water  
176 that can be delivered to the Contractor for the upcoming Year as declared by the Contracting  
177 Officer, pursuant to subdivision (a) of Article 4 of this Contract;

178 (bb) "Water Scheduled" shall mean Project Water made available to the  
179 Contractor for which times and quantities for delivery have been established by the Contractor and  
180 Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

181 (cc) "Year" shall mean the period from and including March 1 of each Calendar  
182 Year through the last day of February of the following Calendar Year.

183 TERM OF CONTRACT

184 2. (a) This Contract shall be effective March 1, 2005, through February 28, 2030,  
185 and supercedes the Existing Contract. In the event the Contractor wishes to renew this Contract  
186 beyond February 28, 2030, the Contractor shall submit a request for renewal in writing to the  
187 Contracting Officer no later than two years prior to the date this Contract expires. The renewal of  
188 this Contract insofar as it pertains to the furnishing of Irrigation Water to the Contractor shall be  
189 governed by subdivision (b) of this Article, and the renewal of this Contract insofar as it pertains to  
190 the furnishing of M&I Water to the Contractor shall be governed by subdivision (c) of this Article.

191 (b) (1) Under terms and conditions of a renewal contract that are mutually  
192 agreeable to the parties hereto, and upon a determination by the Contracting Officer that at the time  
193 of contract renewal the conditions set forth in subdivision (b) (2) of this Article are met, and subject  
194 to Federal and State law, this Contract, insofar as it pertains to the furnishing of Irrigation Water to  
195 the Contractor, shall be renewed for a period of 25 years.

196                                   (2)     The conditions which must be met for this Contract to be renewed are:  
197     (i) the Contractor has prepared a water conservation plan that has been determined by the  
198     Contracting Officer in accordance with Article 26 of this Contract to meet the conservation and  
199     efficiency criteria for evaluating such plans established under Federal law; (ii) the Contractor is  
200     implementing an effective water conservation and efficiency program based on the Contractor's  
201     water conservation plan as required by Article 26 of this Contract; (iii) the Contractor is operating  
202     and maintaining all water measuring devices and implementing all water measurement methods as  
203     approved by the Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor has  
204     reasonably and beneficially used the Project Water supplies made available to it and, based on  
205     projected demands, is reasonably anticipated and expects to fully utilize for reasonable and  
206     beneficial use the quantity of Project Water to be made available to it pursuant to such renewal; (v)  
207     the Contractor is complying with all terms and conditions of this Contract; and (vi) the Contractor  
208     has the physical and legal ability to deliver Project Water.

209                                   (3)     The terms and conditions of the renewal contract described in  
210     subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed  
211     consistent with the parties' respective legal rights and obligations, and in consideration of all  
212     relevant facts and circumstances, as those circumstances exist at the time of renewal, including,  
213     without limitation, the Contractor's need for continued delivery of Project Water; environmental  
214     conditions affected by implementation of the Contract to be renewed, and specifically changes in  
215     those conditions that occurred during the life of the Contract to be renewed; the Secretary's progress  
216     toward achieving the purposes of the CVPIA as set out in Section 3402 and in implementing the  
217     specific provisions of the CVPIA; and current and anticipated economic circumstances of the region  
218     served by the Contractor.

219                   (c)     This Contract, insofar as it pertains to the furnishing of M&I Water to the  
220 Contractor, shall be renewed for successive periods of up to 40 years each, which periods shall be  
221 consistent with the then-existing Reclamation-wide policy, under terms and conditions mutually  
222 agreeable to the parties and consistent with Federal and State law. The Contractor shall be afforded  
223 the opportunity to comment to the Contracting Officer on the proposed adoption and application of  
224 any revised policy applicable to the delivery of M&I Water that would limit the term of any  
225 subsequent renewal contract with the Contractor for the furnishing of M&I Water to less than 40  
226 years.

227                   (d)     The Contracting Officer shall make a determination ten years after the date of  
228 execution of this Contract, and every five years thereafter during the term of this Contract, of  
229 whether a conversion of the relevant portion of this Contract to a contract under subsection 9(d) of  
230 the Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2, 1956 (70  
231 Stat 483). The Contracting Officer shall also make a determination ten years after the date of  
232 execution of this Contract and every five years thereafter during the term of this Contract of whether  
233 a conversion of the relevant portion of this Contract to a contract under subsection 9(c)(1) of the  
234 Reclamation Project Act of 1939 can be accomplished. Notwithstanding any provision of this  
235 Contract, the Contractor reserves and shall have all rights and benefits under the Act of July 2, 1956  
236 (70 Stat. 483). The Contracting Officer anticipates that during the term of this Contract, all  
237 authorized Project construction expected to occur will have occurred, and on that basis the  
238 Contracting Officer agrees upon such completion to allocate all costs that are properly assignable to  
239 the Contractor, and agrees further that, at any time after such allocation is made, and subject to  
240 satisfaction of the condition set out in this subdivision, this Contract shall, at the request of the  
241 Contractor, be converted to a contract under subsection 9(d) or 9(c)(1), whichever is applicable, of

242 the Reclamation Project Act of 1939, subject to applicable Federal law and under stated terms and  
243 conditions mutually agreeable to the Contractor and the Contracting Officer. A condition for such  
244 conversion to occur shall be a determination by the Contracting Officer that, account being taken of  
245 the amount credited to return by the Contractor as provided for under Federal Reclamation law, the  
246 remaining amount of construction costs assignable for ultimate return by the Contractor can  
247 probably be repaid to the United States within the term of a contract under subsection 9(d) or  
248 9(c)(1), whichever is applicable. If the remaining amount of costs that are properly assignable to  
249 the Contractor cannot be determined during the term of this Contract, the Contracting Officer shall  
250 notify the Contractor, and provide the reason(s) why such a determination could not be made.  
251 Further, the Contracting Officer shall make such a determination as soon thereafter as possible so as  
252 to permit, upon request of the Contractor and satisfaction of the conditions set out above,  
253 conversion to a contract under subsection 9(d) or 9(c)(1), whichever is applicable. In the event such  
254 determination of costs has not been made at a time which allows conversion of this Contract during  
255 the term of this Contract or the Contractor has not requested conversion of this Contract within such  
256 term, the parties shall incorporate in any subsequent renewal contract as described in subdivision (b)  
257 of this Article a provision that carries forth in substantially identical terms the provisions of this  
258 subdivision.

259 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

260 3. (a) During each Year, consistent with all applicable State water rights, permits,  
261 and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this  
262 Contract, the Contracting Officer shall make available for delivery to the Contractor 2,990 acre-feet  
263 of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in accordance

264 with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7  
265 of this Contract.

266 (b) Because the capacity of the Project to deliver Project Water has been  
267 constrained in recent years and may be constrained in the future due to many factors including  
268 hydrologic conditions and implementation of Federal and State laws, the likelihood of the  
269 Contractor actually receiving the amount of Project Water set out in subdivision (a) of this Article in  
270 any given Year is uncertain. The Contracting Officer's modeling referenced in the PEIS projected  
271 that the Contract Total set forth in this Contract will not be available to the Contractor in many  
272 years. During the most recent five years, the Recent Historic Average of Water Made Available to  
273 the Contractor was 1,967 acre-feet. Nothing in subdivision (b) of this Article shall affect the rights  
274 and obligations of the parties under any provision of this Contract.

275 (c) The Contractor shall utilize the Project Water in accordance with all  
276 applicable legal requirements.

277 (c.1) In the event any Project Contractor (other than a Cross Valley Contractor)  
278 that receives Project Water through the Delta Division Facilities obtains a contractual agreement  
279 that the Contracting Officer shall make Project Water available at a point or points of delivery in or  
280 north of the Delta, at the request of the Contractor and upon completion of any required  
281 environmental documentation, this Contract shall be amended to provide for deliveries in or north  
282 of the Delta on mutually agreeable terms. Such amendments to the Contract shall be limited solely  
283 to those changes made necessary by the addition of such alternate points of delivery in or north of  
284 the Delta; Provided, That the Contracting Officer's use of the Harvey O. Banks Pumping Plant to  
285 deliver Project Water does not trigger this right of amendment.

286           (d)     The Contractor shall make reasonable and beneficial use of all water furnished  
287 pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu), groundwater  
288 banking programs, surface water storage programs, and other similar programs utilizing Project  
289 Water or other water furnished pursuant to this Contract conducted within the Contractor's Service  
290 Area which are consistent with applicable State law and result in use consistent with Federal  
291 Reclamation law will be allowed; Provided, That any direct recharge program(s) is (are) described  
292 in the Contractor's water conservation plan submitted pursuant to Article 26 of this Contract;  
293 Provided, further, That such water conservation plan demonstrates sufficient lawful uses exist in the  
294 Contractor's Service Area so that using a long-term average, the quantity of Delivered Water is  
295 demonstrated to be reasonable for such uses and in compliance with Federal Reclamation law.  
296 Groundwater recharge programs, groundwater banking programs, surface water storage programs,  
297 and other similar programs utilizing Project Water or other water furnished pursuant to this Contract  
298 conducted outside the Contractor's Service Area may be permitted upon written approval of the  
299 Contracting Officer, which approval will be based upon environmental documentation, Project  
300 Water rights, and Project operational concerns. The Contracting Officer will address such concerns  
301 in regulations, policies, or guidelines.

302           (e)     The Contractor shall comply with requirements applicable to the Contractor  
303 in biological opinion(s) prepared as a result of a consultation regarding the execution of this  
304 Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as  
305 amended, that are within the Contractor's legal authority to implement. The Existing Contract,  
306 which evidences in excess of 45 years of diversions for irrigation and/or M&I purposes of the  
307 quantities of water provided in subdivision (a) of Article 3 of this Contract, will be considered in  
308 developing an appropriate baseline for biological assessment(s) prepared pursuant to the ESA, and

309 any other needed environmental review. Nothing herein shall be construed to prevent the  
310 Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with  
311 respect to any biological opinion or other environmental documentation referred to in this Article.

312 (f) Following the declaration of Water Made Available under Article 4 of this  
313 Contract, the Contracting Officer will make a determination whether Project Water, or other water  
314 available to the Project, can be made available to the Contractor in addition to the Contract Total  
315 under this Article during the Year without adversely impacting other Project Contractors. At the  
316 request of the Contractor, the Contracting Officer will consult with the Contractor prior to making  
317 such a determination. If the Contracting Officer determines that Project Water, or other water  
318 available to the Project, can be made available to the Contractor, the Contracting Officer will  
319 announce the availability of such water and shall so notify the Contractor as soon as practical. The  
320 Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable  
321 of taking such water to determine the most equitable and efficient allocation of such water. If the  
322 Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make  
323 such water available to the Contractor in accordance with applicable statutes, regulations,  
324 guidelines, and policies. Subject to existing long-term contractual commitments, water rights and  
325 operational constraints, long-term Project Contractors shall have a first right to acquire such water,  
326 including Project Water made available pursuant to Section 215 of the RRA.

327 (g) The Contractor may request permission to reschedule for use during the  
328 subsequent Year some or all of the Water Made Available to the Contractor during the current Year,  
329 referred to as “rescheduled water.” The Contractor may request permission to use during the  
330 current Year a quantity of Project Water which may be made available by the United States to the  
331 Contractor during the subsequent Year referred to as “preuse.” The Contracting Officer’s written

332 approval may permit such uses in accordance with applicable statutes, regulations, guidelines, and  
333 policies.

334 (h) The Contractor's right pursuant to Federal Reclamation law and applicable  
335 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract during  
336 the term thereof and any subsequent renewal contracts, as described in Article 2 of this Contract,  
337 during the terms thereof shall not be disturbed so long as the Contractor shall fulfill all of its  
338 obligations under this Contract and any renewals thereof. Nothing in the preceding sentence shall  
339 affect the Contracting Officer's ability to impose shortages under Article 11 or subdivision (b) of  
340 Article 12 of this Contract or applicable provisions of any subsequent renewal contracts.

341 (i) Project Water furnished to the Contractor pursuant to this Contract may be  
342 delivered for purposes other than those described in subdivisions (m) and (o) of Article 1 of this  
343 Contract upon written approval by the Contracting Officer in accordance with the terms and  
344 conditions of such approval.

345 (j) The Contracting Officer shall make reasonable efforts to protect the water  
346 rights necessary for the Project and to provide the water available under this Contract. The  
347 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the  
348 extent permitted by law, in administrative proceedings related to the Project Water rights; Provided,  
349 That the Contracting Officer retains the right to object to the substance of the Contractor's position  
350 in such a proceeding; Provided further, That in such proceedings the Contracting Officer shall  
351 recognize the Contractor has a legal right under the terms of this Contract to use Project Water.

352 TIME FOR DELIVERY OF WATER

353 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer shall  
354 announce the Contracting Officer's expected declaration of the Water Made Available. Such

355 declaration will be expressed in terms of both Water Made Available and the Recent Historic  
356 Average and will be updated monthly, and more frequently if necessary, based on then-current  
357 operational and hydrologic conditions and a new declaration with changes, if any, to the Water  
358 Made Available will be made. The Contracting Officer shall provide forecasts of Project operations  
359 and the basis of the estimate, with relevant supporting information, upon the written request of the  
360 Contractor. Concurrently with the declaration of the Water Made Available, the Contracting  
361 Officer shall provide the Contractor with the updated Recent Historic Average.

362 (b) On or before each March 1 and at such other times as necessary, the  
363 Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting  
364 Officer, showing the monthly quantities of Project Water to be delivered by the United States to the  
365 Contractor pursuant to this Contract for the Year commencing on such March 1. The Contracting  
366 Officer shall use all reasonable means to deliver Project Water according to the approved schedule  
367 for the Year commencing on such March 1.

368 (c) The Contractor shall not schedule Project Water in excess of the quantity of  
369 Project Water the Contractor intends to put to reasonable and beneficial use within the Contractor's  
370 Service Area or to sell, transfer or exchange pursuant to Article 9 of this Contract during any Year.

371 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this  
372 Contract, the United States shall deliver Project Water to the Contractor in accordance with the  
373 initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any  
374 written revision(s), thereto, satisfactory to the Contracting Officer, submitted within a reasonable  
375 time prior to the date(s) on which the requested change(s) is/are to be implemented.

376 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

377 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this  
378 Contract shall be delivered to the Contractor at a point or points and any additional point or points  
379 of delivery either on Project facilities or another location or locations mutually agreed to in writing  
380 by the Contracting Officer and the Contractor.

381 (b) The Contracting Officer, either directly or indirectly through its written  
382 agreement(s) with the Operating Non-Federal Entity(ies), shall make all reasonable efforts to  
383 maintain sufficient flows and levels of water in Project facilities to deliver Project Water to the  
384 Contractor at the point or points of delivery established pursuant to subdivision (a) of this Article.

385 (c) The Contractor shall deliver Irrigation Water in accordance with any  
386 applicable land classification provisions of Federal Reclamation law and the associated regulations.  
387 The Contractor shall not deliver Project Water to land outside the Contractor's Service Area unless  
388 approved in advance by the Contracting Officer.

389 (d) All Water Delivered to the Contractor pursuant to this Contract shall be  
390 measured and recorded with equipment furnished, installed, operated, and maintained by the  
391 Contracting Officer either directly or indirectly through its written agreement(s) with the Operating  
392 Non-Federal Entity(ies), unless undertaken by the Contractor with the consent of the Contracting  
393 Officer, at the point or points of delivery established pursuant to subdivision (a) of this Article.  
394 Upon the request of either party to this Contract, the Contracting Officer shall investigate, or cause  
395 to be investigated by the appropriate Operating Non-Federal Entity(ies), the accuracy of such  
396 measurements and shall take any necessary steps to adjust any errors appearing therein. For any  
397 period of time when accurate measurements have not been made, the Contracting Officer shall

398 consult with the Contractor and the appropriate Operating Non-Federal Entity(ies), if any, prior to  
399 making a final determination of the quantity delivered for that period of time.

400 (e) Absent a separate contrary written agreement with the Contractor, neither the  
401 Contracting Officer nor any Operating Non-Federal Entity (ies) shall be responsible for the control,  
402 carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to  
403 this Contract beyond the point or points of delivery established pursuant to subdivision (a) of this  
404 Article. The Contractor shall indemnify the United States, its officers, employees, agents, and  
405 assigns on account of damage or claim of damage of any nature whatsoever for which there is legal  
406 responsibility, including property damage, personal injury, or death arising out of or connected with  
407 the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such  
408 point or points of delivery, except for any damage or claim arising out of: (i) acts or omissions of  
409 the Contracting Officer or any of its officers, employees, agents, and assigns, including the  
410 Operating Non-Federal Entity(ies), with the intent of creating the situation resulting in any damage  
411 or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents,  
412 and assigns, including the Operating Non-Federal Entity(ies); (iii) negligence of the Contracting  
413 Officer or any of its officers, employees, agents, and assigns including the Operating Non-Federal  
414 Entity(ies); or (iv) a malfunction of facilities owned and/or operated by the United States or the  
415 Operating Non-Federal Entity(ies).

416 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

417 6. (a) The Contractor has established a measuring program satisfactory to the  
418 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation  
419 purposes within the Contractor's Service Area is measured at each agricultural turnout and such  
420 water delivered for M&I purposes is measured at each M&I service connection. The water

421 measuring devices or water measuring methods of comparable effectiveness must be acceptable to  
422 the Contracting Officer. The Contractor shall be responsible for installing, operating, and  
423 maintaining and repairing all such measuring devices and implementing all such water measuring  
424 methods at no cost to the United States. The Contractor shall use the information obtained from  
425 such water measuring devices or water measuring methods to ensure its proper management of the  
426 water, to bill water users for water delivered by the Contractor; and, if applicable, to record water  
427 delivered for M&I purposes by customer class as defined in the Contractor's water conservation  
428 plan provided for in Article 26 of this Contract. Nothing herein contained, however, shall preclude  
429 the Contractor from establishing and collecting any charges, assessments, or other revenues  
430 authorized by California law. The Contractor shall include a summary of all its annual surface  
431 water deliveries in the annual report described in subdivision (c) of Article 26.

432 (b) To the extent the information has not otherwise been provided, upon  
433 execution of this Contract, the Contractor shall provide to the Contracting Officer a written report  
434 describing the measurement devices or water measuring methods being used or to be used to  
435 implement subdivision (a) of this Article and identifying the agricultural turnouts and the M&I  
436 service connections or alternative measurement programs approved by the Contracting Officer, at  
437 which such measurement devices or water measuring methods are being used, and, if applicable,  
438 identifying the locations at which such devices and/or methods are not yet being used including a  
439 time schedule for implementation at such locations. The Contracting Officer shall advise the  
440 Contractor in writing within 60 days as to the adequacy, and necessary modifications, if any, of the  
441 measuring devices or water measuring methods identified in the Contractor's report and if the  
442 Contracting Officer does not respond in such time, they shall be deemed adequate. If the  
443 Contracting Officer notifies the Contractor that the measuring devices or methods are inadequate,

444 the parties shall within 60 days following the Contracting Officer's response, negotiate in good faith  
445 the earliest practicable date by which the Contractor shall modify said measuring devices and/or  
446 measuring methods as required by the Contracting Officer to ensure compliance with subdivision  
447 (a) of this Article.

448 (c) All new surface water delivery systems installed within the Contractor's  
449 Service Area after the effective date of this Contract shall also comply with the measurement  
450 provisions described in subdivision (a) of this Article.

451 (d) The Contractor shall inform the Contracting Officer and the State of  
452 California in writing by April 30 of each Year of the monthly volume of surface water delivered  
453 within the Contractor's Service Area during the previous Year.

454 (e) The Contractor shall inform the Contracting Officer and the Operating  
455 Non-Federal Entity on or before the 20th calendar day of each month of the quantity of Irrigation  
456 Water and M&I Water taken during the preceding month.

457 RATES AND METHOD OF PAYMENT FOR WATER

458 7. (a) The Contractor shall pay the United States as provided in this Article for all  
459 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance  
460 with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's  
461 then-existing ratesetting policy for M&I Water, which ratesetting policies shall be amended,  
462 modified, or superceded only through a public notice and comment procedure; (ii) applicable  
463 Federal Reclamation law and associated rules and regulations, or policies; and (iii) other applicable  
464 provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfer,  
465 or any other mechanism as may be agreed to in writing by the Contractor and the Contracting

466 Officer. The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon  
467 execution of this Contract are set forth in Exhibit “B,” as may be revised annually.

468 (b) The Contracting Officer shall notify the Contractor of the Rates, Charges, and  
469 Tiered Pricing Component as follows:

470 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall  
471 provide the Contractor an estimate of the Charges for Project Water that will be applied to the  
472 period October 1, of the current Calendar Year, through September 30, of the following Calendar  
473 Year, and the basis for such estimate. The Contractor shall be allowed not less than two months to  
474 review and comment on such estimates. On or before September 15 of each Calendar Year, the  
475 Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during the  
476 period October 1 of the current Calendar Year, through September 30, of the following Calendar  
477 Year, and such notification shall revise Exhibit “B.”

478 (2) Prior to October 1 of each Calendar Year, the Contracting Officer  
479 shall make available to the Contractor an estimate of the Rates and Tiered Pricing Component for  
480 Project Water for the following Year and the computations and cost allocations upon which those  
481 Rates are based. The Contractor shall be allowed not less than two months to review and comment  
482 on such computations and cost allocations. By December 31 of each Calendar Year, the  
483 Contracting Officer shall provide the Contractor with the final Rates and Tiered Pricing Component  
484 to be in effect for the upcoming Year, and such notification shall revise Exhibit “B.”

485 (c) At the time the Contractor submits the initial schedule for the delivery of  
486 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor  
487 shall make an advance payment to the United States equal to the total amount payable pursuant to  
488 the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be

489 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end  
 490 of the first month and before the end of each calendar month thereafter, the Contractor shall make  
 491 an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for  
 492 the Water Scheduled to be delivered pursuant to this Contract during the second month immediately  
 493 following. Adjustments between advance payments for Water Scheduled and payments at Rates  
 494 due for Water Delivered shall be made before the end of the following month; Provided, That any  
 495 revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases  
 496 the amount of Water Delivered pursuant to this Contract during any month shall be accompanied  
 497 with appropriate advance payment, at the Rates then in effect, to assure that Project Water is not  
 498 delivered to the Contractor in advance of such payment. In any month in which the quantity of  
 499 Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled  
 500 and paid for by the Contractor, no additional Project Water shall be delivered to the Contractor  
 501 unless and until an advance payment at the Rates then in effect for such additional Project Water is  
 502 made. Final adjustment between the advance payments for the Water Scheduled and payments for  
 503 the quantities of Water Delivered during each Year pursuant to this Contract shall be made as soon  
 504 as practicable but no later than April 30th of the following Year, or 60 days after the delivery of  
 505 Project Water rescheduled under subdivision (g) of Article 3 of this Contract if such water is not  
 506 delivered by the last day of February.

507 (d) The Contractor shall also make a payment in addition to the Rate(s) in  
 508 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the  
 509 appropriate Tiered Pricing Component then in effect, before the end of the month following the  
 510 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered  
 511 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent

512 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery  
513 report for the subject month prepared by the Operating Non-Federal Entity(ies) or, if there is no  
514 Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be  
515 deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water  
516 Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the  
517 adjustment of payments due to the United States for Charges for the next month. Any amount to be  
518 paid for past due payment of Charges and the Tiered Pricing Component shall be computed  
519 pursuant to Article 20 of this Contract.

520 (e) The Contractor shall pay for any Water Delivered under subdivision (a), (f),  
521 or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable  
522 statutes, associated regulations, any applicable provisions of guidelines or ratesetting policies;  
523 Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this Contract shall  
524 be no more than the otherwise applicable Rate for Irrigation Water or M&I Water under subdivision  
525 (a) of this Article.

526 (f) Payments to be made by the Contractor to the United States under this  
527 Contract may be paid from any revenues available to the Contractor.

528 (g) All revenues received by the United States from the Contractor relating to the  
529 delivery of Project Water or the delivery of non-Project water through Project facilities shall be  
530 allocated and applied in accordance with Federal Reclamation law and the associated rules or  
531 regulations, and the then current Project ratesetting policies for M&I Water or Irrigation Water.

532 (h) The Contracting Officer shall keep its accounts pertaining to the  
533 administration of the financial terms and conditions of its long-term contracts, in accordance with  
534 applicable Federal standards, so as to reflect the application of Project costs and revenues. The

535 Contracting Officer shall, each Year upon request of the Contractor, provide to the Contractor a  
536 detailed accounting of all Project and Contractor expense allocations, the disposition of all Project  
537 and Contractor revenues, and a summary of all water delivery information. The Contracting Officer  
538 and the Contractor shall enter into good faith negotiations to resolve any discrepancies or disputes  
539 relating to accountings, reports, or information.

540 (i) The parties acknowledge and agree that the efficient administration of this  
541 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,  
542 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Component,  
543 and/or for making and allocating payments, other than those set forth in this Article may be in the  
544 mutual best interest of the parties, it is expressly agreed that the parties may enter into agreements to  
545 modify the mechanisms, policies, and procedures for any of those purposes while this Contract is in  
546 effect without amending this Contract.

547 (j) (1) Beginning at such time as deliveries of Project Water in a Year  
548 exceed 80 percent of the Contract Total, then before the end of the month following the month of  
549 delivery the Contractor shall make an additional payment to the United States equal to the  
550 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water  
551 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the  
552 Contract Total, shall equal one-half of the difference between the Rate established under  
553 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate,  
554 whichever is applicable. The Tiered Pricing Component for the amount of Water Delivered which  
555 exceeds 90 percent of the Contract Total shall equal the difference between (i) the Rate established  
556 under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost  
557 Water Rate, whichever is applicable. For all Water Delivered pursuant to subdivision (a) of

558 Article 3 of this Contract which is in excess of 80 percent of the Contract Total, this increment shall  
559 be deemed to be divided between Irrigation Water and M&I Water in the same proportion as actual  
560 deliveries of each bear to the cumulative total Water Delivered.

561 (2) Subject to the Contracting Officer's written approval, the Contractor  
562 may request and receive an exemption from such Tiered Pricing Component for Project Water  
563 delivered to produce a crop which the Contracting Officer determines will provide significant and  
564 quantifiable habitat values for waterfowl in fields where the water is used and the crops are  
565 produced; Provided, That the exemption from the Tiered Pricing Component for Irrigation Water  
566 shall apply only if such habitat values can be assured consistent with the purposes of the CVPIA  
567 through binding agreements executed with or approved by the Contracting Officer prior to use of  
568 such water.

569 (3) For purposes of determining the applicability of the Tiered Pricing  
570 Component pursuant to this Article, Water Delivered shall include Project Water that the Contractor  
571 transfers to others but shall not include Project Water transferred to the Contractor, nor shall it  
572 include the additional water provided to the Contractor under the provisions of subdivision (f) of  
573 Article 3 of this Contract.

574 (k) For the term of this Contract, Rates applied under the respective ratesetting  
575 policies will be established to recover only reimbursable O&M (including any deficits) and capital  
576 costs of the Project, as those terms are used in the then-current Project ratesetting policies, and  
577 interest, where appropriate, except in instances where a minimum Rate is applicable in accordance  
578 with the relevant Project ratesetting policy. Changes of significance in practices which implement  
579 the Contracting Officer's ratesetting policies will not be implemented until the Contracting Officer

580 has provided the Contractor an opportunity to discuss the nature, need, and impact of the proposed  
581 change.

582 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,  
583 the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates, in  
584 accordance with the applicable Project ratesetting policy, adjusted upward or downward to reflect  
585 the changed costs, if any, incurred by the Contracting Officer in the delivery of the transferred  
586 Project Water to the transferee's point of delivery. If the Contractor is receiving lower Rates and  
587 Charges because of inability to pay and is transferring Project Water to another entity whose Rates  
588 and Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project  
589 Water shall not be adjusted to reflect the Contractor's inability to pay.

590 (m) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting  
591 Officer is authorized to adjust determinations of ability to pay every five years.

592 (n) With respect to the Rates for M&I Water, the Contractor asserts that it is not  
593 legally obligated to pay any Project deficits claimed by the United States to have accrued as of the  
594 date of this Contract or deficit-related interest charges thereon. By entering into this Contract, the  
595 Contractor does not waive any legal rights or remedies that it may have with respect to such  
596 disputed issues. Notwithstanding the execution of this Contract and payments made hereunder, the  
597 Contractor may challenge in the appropriate administrative or judicial forums; (1) the existence,  
598 computation, or imposition of any deficit charges accruing during the term of the Existing Contract  
599 and any preceding interim renewal contracts, if applicable; (2) interest accruing on any such  
600 deficits; (3) the inclusion of any such deficit charges or interest in the Rates; (4) the application by  
601 the United States of payments made by the Contractor under its Existing Contract and any  
602 preceding interim renewal contracts if applicable; and (5) the application of such payments in the

603 Rates. The Contracting Officer agrees that the Contractor shall be entitled to the benefit of any  
604 administrative or judicial ruling in favor of any Project M&I contractor on any of these issues, and  
605 credits for payments heretofore made, provided that the basis for such ruling is applicable to the  
606 Contractor.

607 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

608 8. The Contractor and the Contracting Officer concur that, as of the effective date of  
609 this Contract, the Contractor has no non-interest bearing O&M deficits and shall have no further  
610 liability therefore.

611 SALES, TRANSFERS, OR EXCHANGES OF WATER

612 9. (a) The right to receive Project Water provided for in this Contract may be sold,  
613 transferred, or exchanged to others for reasonable and beneficial uses within the State of California  
614 if such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable  
615 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this  
616 Contract may take place without the prior written approval of the Contracting Officer, except as  
617 provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be  
618 approved absent all appropriate environmental documentation, including but not limited to,  
619 documents prepared pursuant to the NEPA and ESA. Such environmental documentation should  
620 include, as appropriate, an analysis of groundwater impacts and economic and social effects,  
621 including environmental justice, of the proposed water transfers on both the transferor and  
622 transferee.

623 (b) In order to facilitate efficient water management by means of water transfers  
624 of the type historically carried out among Project Contractors located within the same geographical  
625 area and to allow the Contractor to participate in an accelerated water transfer program during the

626 term of this Contract, the Contracting Officer shall prepare, as appropriate, all necessary  
627 environmental documentation, including but not limited to documents prepared pursuant to NEPA  
628 and ESA, analyzing annual transfers within such geographical areas and the Contracting Officer  
629 shall determine whether such transfers comply with applicable law. Following the completion of  
630 the environmental documentation, such transfers addressed in such documentation shall be  
631 conducted with advance notice to the Contracting Officer, but shall not require prior written  
632 approval by the Contracting Officer. Such environmental documentation and the Contracting  
633 Officer's compliance determination shall be reviewed every five years and updated, as necessary,  
634 prior to the expiration of the then existing five-year period. All subsequent environmental  
635 documentation shall include an alternative to evaluate not less than the quantity of Project Water  
636 historically transferred within the same geographical area.

637 (c) For a water transfer to qualify under subdivision (b) of this Article, such  
638 water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three years,  
639 for M&I use, groundwater recharge, groundwater banking, or similar groundwater activities, surface  
640 water storage, or fish and wildlife resources; not lead to land conversion; and be delivered to  
641 established cropland, wildlife refuges, groundwater basins, or M&I use; (ii) occur within a single  
642 Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water through existing  
643 facilities with no new construction or modifications to facilities and be between existing Project  
644 Contractors and/or the Contractor and the United States, Department of the Interior; and (v) comply  
645 with all applicable Federal, State, and local or tribal laws and requirements imposed for protection  
646 of the environment and Indian Trust Assets, as defined under Federal law.

647 APPLICATION OF PAYMENTS AND ADJUSTMENTS

648 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,  
649 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of  
650 the Contractor arising out of this Contract then due and payable. Overpayments of more than  
651 \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such  
652 overpayment at the option of the Contractor may be credited against amounts to become due to the  
653 United States by the Contractor. With respect to overpayment, such refund or adjustment shall  
654 constitute the sole remedy of the Contractor or anyone having or claiming to have the right to the  
655 use of any of the Project Water supply provided for herein. All credits and refunds of overpayments  
656 shall be made within 30 days of the Contracting Officer obtaining direction as to how to credit or  
657 refund such overpayment in response to the notice to the Contractor that it has finalized the  
658 accounts for the Year in which the overpayment was made.

659 (b) All advances for miscellaneous costs incurred for work requested by the  
660 Contractor pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs when  
661 the work has been completed. If the advances exceed the actual costs incurred, the difference will  
662 be refunded to the Contractor. If the actual costs exceed the Contractor's advances, the Contractor  
663 will be billed for the additional costs pursuant to Article 25.

664 TEMPORARY REDUCTIONS--RETURN FLOWS

665 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the  
666 requirements of Federal law and (ii) the obligations of the United States under existing contracts, or  
667 renewals thereof, providing for water deliveries from the Project, the Contracting Officer shall make  
668 all reasonable efforts to optimize Project Water deliveries to the Contractor as provided in this  
669 Contract.

670 (b) The Contracting Officer or Operating Non-Federal Entity(ies) may  
671 temporarily discontinue or reduce the quantity of Water Delivered to the Contractor as herein  
672 provided for the purposes of investigation, inspection, maintenance, repair, or replacement of any of  
673 the Project facilities or any part thereof necessary for the delivery of Project Water to the  
674 Contractor, but so far as feasible the Contracting Officer or Operating Non-Federal Entity(ies) will  
675 give the Contractor due notice in advance of such temporary discontinuance or reduction, except in  
676 case of emergency, in which case no notice need be given; Provided, That the United States shall  
677 use its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of  
678 service after such reduction or discontinuance, and if requested by the Contractor, the United States  
679 will, if possible, deliver the quantity of Project Water which would have been delivered hereunder  
680 in the absence of such discontinuance or reduction.

681 (c) The United States reserves the right to all seepage and return flow water  
682 derived from Water Delivered to the Contractor hereunder which escapes or is discharged beyond  
683 the Contractor's Service Area; Provided, That this shall not be construed as claiming for the United  
684 States any right to seepage or return flow being put to reasonable and beneficial use pursuant to this  
685 Contract within the Contractor's Service Area by the Contractor or those claiming by, through, or  
686 under the Contractor.

687 CONSTRAINTS ON THE AVAILABILITY OF WATER

688 12. (a) In its operation of the Project, the Contracting Officer will use all reasonable  
689 means to guard against a Condition of Shortage in the quantity of water to be made available to the  
690 Contractor pursuant to this Contract. In the event the Contracting Officer determines that a  
691 Condition of Shortage appears probable, the Contracting Officer will notify the Contractor of said  
692 determination as soon as practicable.

693                   (b)     If there is a Condition of Shortage because of errors in physical operations of  
694 the Project, drought, other physical causes beyond the control of the Contracting Officer or actions  
695 taken by the Contracting Officer to meet legal obligations then, except as provided in subdivision  
696 (a) of Article 18 of this Contract, no liability shall accrue against the United States or any of its  
697 officers, agents, or employees for any damage, direct or indirect, arising therefrom.

698                   (c)     In any Year in which there may occur a Condition of Shortage for any of the  
699 reasons specified in subdivision (b) of this Article, and subject to subdivision (d) of this Article, the  
700 Contracting Officer will first allocate the available Project Water consistent with the Central Valley  
701 Project M&I Water Shortage Policy in its form on the effective date of this Contract for determining  
702 the amount of Project Water available for delivery to the Project Contractors. Subject to the  
703 foregoing allocation, in any year in which there may occur a Condition of Shortage, the Contracting  
704 Officer shall then apportion Project Water among the Contractor and others entitled to Project  
705 Water from Delta Division Facilities under long-term water service or repayment contracts (or  
706 renewals thereof or binding commitments therefore) in force on February 28, 2005, as follows:

707                   (1)     The Contracting Officer shall make an initial and subsequent  
708 determination as necessary of the total quantity of Project Water estimated to be scheduled or  
709 actually scheduled under subdivision (b) of Article 4 of this Contract and under all other long-term  
710 water service or repayment contracts then in force for the delivery of Project Water by the United  
711 States from Delta Division Facilities during the relevant Year, the quantity so determined being  
712 hereinafter referred to as the scheduled total;

713                   (2)     A determination shall be made of the total quantity of Project Water  
714 that is available for meeting the scheduled total, the quantity so determined being hereinafter  
715 referred to as the available supply;

716                               (3)     The total quantity of Project Water estimated to be scheduled or  
717 actually scheduled by the Contractor during the relevant Year, under subdivision (b) of Article 4  
718 hereof, shall be divided by the scheduled total, the quotient thus obtained being hereinafter referred  
719 to as the Contractor's proportionate share; and

720                               (4)     The available supply shall be multiplied by the Contractor's  
721 proportionate share and the result shall be the quantity of Project Water made available by the  
722 United States to the Contractor for the relevant Year in accordance with the schedule developed by  
723 the Contracting Officer under subdivision (c) (1) of this Article, but in no event shall such amount  
724 exceed the Contract Total. In the event the Contracting Officer subsequently determines that the  
725 Contracting Officer can increase or needs to decrease the available supply for delivery from Delta  
726 Division Facilities to long-term water service and repayment Contractors during the relevant Year,  
727 such additions or reductions to the available supply shall be apportioned consistent with  
728 subparagraphs (1) through (4), inclusive.

729                               (d)     By entering into this Contract, the Contractor does not waive any legal rights  
730 or remedies it may have to file or participate in any administrative or judicial proceeding contesting  
731 (i) the sufficiency of the Central Valley Project M&I Water Shortage Policy; (ii) the substance of  
732 such a policy; (iii) the applicability of such a policy; or (iv) the manner in which such policy is  
733 implemented in order to allocate Project Water between municipal and industrial and irrigation  
734 purposes; Provided, That the Contractor has commenced any such judicial challenge or any  
735 administrative procedures necessary to institute any judicial challenge within six months of the  
736 policy becoming final. By agreeing to the foregoing, the Contracting Officer does not waive any  
737 legal defenses or remedies that it may have to assert in such a proceeding. Nothing contained herein  
738 shall be interpreted to validate or invalidate the Central Valley Project M&I Water Shortage Policy.

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UNAVOIDABLE GROUNDWATER PERCOLATION

13. To the extent applicable, the Contractor shall not be deemed to have delivered Irrigation Water to Excess Lands or Ineligible Lands within the meaning of this Contract if such lands are irrigated with groundwater that reaches the underground strata as an unavoidable result of the delivery of Irrigation Water by the Contractor to Eligible Lands.

RULES AND REGULATIONS

14. The parties agree that the delivery of Irrigation Water or use of Federal facilities pursuant to this Contract is subject to Federal Reclamation law, including but not limited to the Reclamation Reform Act of 1982 (43 U.S.C.390aa et seq.), as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

WATER AND AIR POLLUTION CONTROL

15. The Contractor, in carrying out this Contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of California, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

QUALITY OF WATER

16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to this Contract shall be operated and maintained to enable the United States to deliver Project Water to the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat. 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the Contractor pursuant to this Contract.

(b) The O&M of Project facilities shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable as determined by the Contracting Officer. The Contractor shall be

766 responsible for compliance with all State and Federal water quality standards applicable to surface  
767 and subsurface agricultural drainage discharges generated through the use of Federal or Contractor  
768 facilities or Project Water provided by the Contractor within the Contractor's Service Area.

769 (c) Omitted.

770 WATER ACQUIRED BY THE CONTRACTOR  
771 OTHER THAN FROM THE UNITED STATES

772 17. (a) Water or water rights now owned or hereafter acquired by the Contractor  
773 other than from the United States and Irrigation Water furnished pursuant to the terms of this  
774 Contract may be simultaneously transported through the same distribution facilities of the  
775 Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water  
776 and non-Project water were constructed without funds made available pursuant to Federal  
777 Reclamation law, the provisions of Federal Reclamation law will be applicable only to the  
778 Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive Irrigation  
779 Water must be established through the certification requirements as specified in the Acreage  
780 Limitation Rules and Regulations (43 CFR Part 426); (iii) the water requirements of Eligible Lands  
781 within the Contractor's Service Area can be established and the quantity of Irrigation Water to be  
782 utilized is less than or equal to the quantity necessary to irrigate such Eligible Lands; and (iv) if the  
783 facilities utilized for commingling Irrigation Water and non-Project water are/were constructed with  
784 funds made available pursuant to Federal Reclamation law, the non-Project water will be subject to  
785 the acreage limitation provisions of Federal Reclamation law, unless the Contractor pays to the  
786 United States the incremental fee described in 43 CFR 426.15. In determining the incremental fee,  
787 the Contracting Officer will calculate annually the cost to the Federal Government, including  
788 interest of storing or delivering non-Project water, which for purposes of this Contract shall be  
789 determined as follows: The quotient shall be the unpaid distribution system costs divided by the

790 total irrigable acreage within the Contractor's Service Area. The incremental fee per acre is the  
791 mathematical result of such quotient times the interest rate determined using Section 202 (3) of the  
792 Act of October 12, 1982 (96 Stat. 1263). Such incremental fee will be charged to each acre of  
793 excess or full cost land within the Contractor's Service Area that receives non-Project water through  
794 Federally financed or constructed facilities. The incremental fee calculation methodology will  
795 continue during the term of this Contract absent the promulgation of a contrary Reclamation-wide  
796 rule, regulation, or policy adopted after the Contractor has been afforded the opportunity to review  
797 and comment on the proposed rule, regulation, or policy. If such rule, regulation, or policy is  
798 adopted it shall supercede this provision.

799 (b) Water or water rights now owned or hereafter acquired by the Contractor,  
800 other than from the United States may be stored, conveyed, and/or diverted through Project  
801 facilities, subject to the completion of appropriate environmental documentation, with the approval  
802 of the Contracting Officer and the execution of any contract determined by the Contracting Officer  
803 to be necessary, consistent with the following provisions:

804 (1) The Contractor may introduce non-Project water into Project facilities  
805 and deliver said water to lands within the Contractor's Service Area, including Ineligible Lands,  
806 subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an  
807 appropriate rate as determined by the applicable Project ratesetting policy, the RRA, and the Project  
808 use power policy, if such Project use power policy is applicable, each as amended, modified or  
809 superceded from time to time.

810 (2) Delivery of such non-Project water in and through Project facilities  
811 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes  
812 as determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to

813 other Project Contractors; (iii) interfere with the delivery of contractual water entitlements to any  
814 other Project Contractors; or (iv) interfere with the physical maintenance of the Project facilities.

815 (3) Neither the United States nor the Operating Non-Federal Entity(ies)  
816 shall be responsible for control, care or distribution of the non-Project water before it is introduced  
817 into or after it is delivered from the Project facilities. The Contractor hereby releases and agrees to  
818 defend and indemnify the United States and the Operating Non-Federal Entity(ies), and their  
819 respective officers, agents, and employees, from any claim for damage to persons or property, direct  
820 or indirect, resulting from the act(s) of the Contractor, its officers, employees, agents, or assigns, in  
821 (i) extracting or diverting non-Project water from any source, or (ii) diverting such non-Project  
822 water into Project facilities.

823 (4) Diversion of such non-Project water into Project facilities shall be  
824 consistent with all applicable laws, and if involving groundwater, consistent with any applicable  
825 groundwater management plan for the area from which it was extracted.

826 (5) After Project purposes are met, as determined by the Contracting  
827 Officer, the United States and Project Contractors entitled to Project Water from Delta Division  
828 Facilities shall share priority to utilize the remaining capacity of the facilities declared to be  
829 available by the Contracting Officer for conveyance and transportation of non-Project water prior to  
830 any such remaining capacity being made available to non-Project contractors. Other Project  
831 Contractors shall have a second priority to any remaining capacity of facilities declared to be  
832 available by the Contracting Officer for conveyance and transportation of non-Project water prior to  
833 any such remaining capacity being made available to non-Project contractors.

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OPINIONS AND DETERMINATIONS

18. (a) Where the terms of this Contract provide for actions to be based upon the opinion or determination of either party to this Contract, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. Both parties, notwithstanding any other provisions of this Contract, expressly reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each opinion or determination by either party shall be provided in a timely manner. Nothing in this subdivision (a) of this Article is intended to or shall affect or alter the standard of judicial review applicable under Federal law to any opinion or determination implementing a specific provision of Federal law embodied in statute or regulation.

(b) The Contracting Officer shall have the right to make determinations necessary to administer this Contract that are consistent with the provisions of this Contract, the laws of the United States and of the State of California, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the Contractor to the extent reasonably practicable.

COORDINATION AND COOPERATION

19. (a) In order to further their mutual goals and objectives, the Contracting Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and with other affected Project Contractors, in order to improve the operation and management of the Project. The communication, coordination, and cooperation regarding operations and management shall include, but not be limited to, any action which will or may materially affect the quantity or quality of Project Water supply, the allocation of Project Water supply, and Project financial matters including, but not limited to, budget issues. The communication, coordination, and cooperation

857 provided for hereunder shall extend to all provisions of this Contract. Each party shall retain  
858 exclusive decision making authority for all actions, opinions, and determinations to be made by the  
859 respective party.

860 (b) Within 120 days following the effective date of this Contract, the Contractor,  
861 other affected Project Contractors, and the Contracting Officer shall arrange to meet with interested  
862 Project Contractors to develop a mutually agreeable, written Project-wide process, which may be  
863 amended as necessary separate and apart from this Contract. The goal of this process shall be to  
864 provide, to the extent practicable, the means of mutual communication and interaction regarding  
865 significant decisions concerning Project operation and management on a real-time basis.

866 (c) In light of the factors referred to in subdivision (b) of Article 3 of this  
867 Contract, it is the intent of the Secretary to improve water supply reliability. To carry out this  
868 intent:

869 (1) The Contracting Officer will, at the request of the Contractor, assist in  
870 the development of integrated resource management plans for the Contractor. Further, the  
871 Contracting Officer will, as appropriate, seek authorizations for implementation of partnerships to  
872 improve water supply, water quality, and reliability.

873 (2) The Secretary will, as appropriate, pursue program and project  
874 implementation and authorization in coordination with Project Contractors to improve the water  
875 supply, water quality, and reliability of the Project for all Project purposes.

876 (3) The Secretary will coordinate with Project Contractors and the State  
877 of California to seek improved water resource management.

878 (4) The Secretary will coordinate actions of agencies within the  
879 Department of the Interior that may impact the availability of water for Project purposes.

880 (5) The Contracting Officer shall periodically, but not less than annually,  
881 hold division level meetings to discuss Project operations, division level water management  
882 activities, and other issues as appropriate.

883 (d) Without limiting the contractual obligations of the Contracting Officer under  
884 the other Articles of this Contract, nothing in this Article shall be construed to limit or constrain the  
885 Contracting Officer's ability to communicate, coordinate, and cooperate with the Contractor or  
886 other interested stakeholders or to make decisions in a timely fashion as needed to protect health,  
887 safety or the physical integrity of structures or facilities.

888 CHARGES FOR DELINQUENT PAYMENTS

889 20. (a) The Contractor shall be subject to interest, administrative and penalty charges  
890 on delinquent installments or payments. When a payment is not received by the due date, the  
891 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.  
892 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative  
893 charge to cover additional costs of billing and processing the delinquent payment. When a payment  
894 is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six  
895 (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the  
896 Contractor shall pay any fees incurred for debt collection services associated with a delinquent  
897 payment.

898 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in  
899 the Federal Register by the Department of the Treasury for application to overdue payments, or the  
900 interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation  
901 Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due  
902 date and remain fixed for the duration of the delinquent period.

903 (c) When a partial payment on a delinquent account is received, the amount  
904 received shall be applied, first to the penalty, second to the administrative charges, third to the  
905 accrued interest, and finally to the overdue payment.

906 EQUAL OPPORTUNITY

907 21. During the performance of this Contract, the Contractor agrees as follows:

908 (a) The Contractor will not discriminate against any employee or applicant for  
909 employment because of race, color, religion, sex, or national origin. The Contractor will take  
910 affirmative action to ensure that applicants are employed, and that employees are treated during  
911 employment, without regard to their race, color, religion, sex, or national origin. Such action shall

912 include, but not be limited to, the following: Employment, upgrading, demotion, or transfer;  
913 recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of  
914 compensation; and selection for training, including apprenticeship. The Contractor agrees to post in  
915 conspicuous places, available to employees and applicants for employment, notices to be provided  
916 by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

917 (b) The Contractor will, in all solicitations or advertisements for employees  
918 placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration  
919 for employment without discrimination because of race, color, religion, sex, or national origin.

920 (c) The Contractor will send to each labor union or representative of workers  
921 with which it has a collective bargaining agreement or other contract or understanding, a notice, to  
922 be provided by the Contracting Officer, advising the said labor union or workers' representative of  
923 the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965,  
924 and shall post copies of the notice in conspicuous places available to employees and applicants for  
925 employment.

926 (d) The Contractor will comply with all provisions of Executive Order  
927 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of  
928 the Secretary of Labor.

929 (e) The Contractor will furnish all information and reports required by said  
930 amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or  
931 pursuant thereto, and will permit access to its books, records, and accounts by the Contracting  
932 Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such  
933 rules, regulations, and orders.

934 (f) In the event of the Contractor's noncompliance with the nondiscrimination  
935 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be  
936 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared  
937 ineligible for further Government contracts in accordance with procedures authorized in said  
938 amended Executive Order, and such other sanctions may be imposed and remedies invoked as  
939 provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as  
940 otherwise provided by law.

941 (g) The Contractor will include the provisions of paragraphs (a) through (g) in  
942 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
943 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such  
944 provisions will be binding upon each subcontractor or vendor. The Contractor will take such action  
945 with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a  
946 means of enforcing such provisions, including sanctions for noncompliance: Provided, however,  
947 That in the event the Contractor becomes involved in, or is threatened with, litigation with a  
948 subcontractor or vendor as a result of such direction, the Contractor may request the United States  
949 to enter into such litigation to protect the interests of the United States.

950 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

951 22. (a) The obligation of the Contractor to pay the United States as provided in this  
952 Contract is a general obligation of the Contractor notwithstanding the manner in which the  
953 obligation may be distributed among the Contractor's water users and notwithstanding the default of  
954 individual water users in their obligations to the Contractor.

955 (b) The payment of charges becoming due hereunder is a condition precedent to  
956 receiving benefits under this Contract. The United States shall not make water available to the  
957 Contractor through Project facilities during any period in which the Contractor may be in arrears in  
958 the advance payment of water rates due the United States. The Contractor shall not furnish water  
959 made available pursuant to this Contract for lands or parties which are in arrears in the advance  
960 payment of water rates levied or established by the Contractor.

961 (c) With respect to subdivision (b) of this Article, the Contractor shall have no  
962 obligation to require advance payment for water rates which it levies.

963 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

964 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964  
965 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the  
966 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws,  
967 as well as with their respective implementing regulations and guidelines imposed by the U.S.  
968 Department of the Interior and/or Bureau of Reclamation.

969 (b) These statutes require that no person in the United States shall, on the  
970 grounds of race, color, national origin, handicap, or age, be excluded from participation in, be  
971 denied the benefits of, or be otherwise subjected to discrimination under any program or activity  
972 receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the  
973 Contractor agrees to immediately take any measures necessary to implement this obligation,  
974 including permitting officials of the United States to inspect premises, programs, and documents.

975 (c) The Contractor makes this agreement in consideration of and for the purpose  
976 of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal  
977 financial assistance extended after the date hereof to the Contractor by the Bureau of Reclamation,  
978 including installment payments after such date on account of arrangements for Federal financial  
979 assistance which were approved before such date. The Contractor recognizes and agrees that such  
980 Federal assistance will be extended in reliance on the representations and agreements made in this  
981 Article, and that the United States reserves the right to seek judicial enforcement thereof.

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PRIVACY ACT COMPLIANCE

983           24.   (a)    The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a)  
984 (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et  
985 seq.) in maintaining Landholder acreage certification and reporting records, required to be  
986 submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation Reform  
987 Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

988                   (b)    With respect to the application and administration of the criminal penalty  
989 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible  
990 for maintaining the certification and reporting records referenced in (a) above are considered to be  
991 employees of the Department of the Interior. See 5 U.S.C. 552a(m).

992                   (c)    The Contracting Officer or a designated representative shall provide the  
993 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of  
994 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,  
995 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information  
996 contained in the Landholder's certification and reporting records.

997                   (d)    The Contracting Officer shall designate a full-time employee of the Bureau of  
998 Reclamation to be the System Manager who shall be responsible for making decisions on denials  
999 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is  
1000 authorized to grant requests by individuals for access to their own records.  
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1002                   (e)    The Contractor shall forward promptly to the System Manager each proposed  
1003 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR  
1004 2.71; notify the requester accordingly of such referral; and provide the System Manager with  
1005 information and records necessary to prepare an appropriate response to the requester. These  
1006 requirements do not apply to individuals seeking access to their own certification and reporting  
1007 forms filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the  
1008 Privacy Act as a basis for the request.

1009                   CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1010           25.    In addition to all other payments to be made by the Contractor pursuant to this  
1011 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and  
1012 detailed statement submitted by the Contracting Officer to the Contractor for such specific items of  
1013 direct cost incurred by the United States for work requested by the Contractor associated with this  
1014 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and  
1015 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in

1016 writing in advance by the Contractor. This Article shall not apply to costs for routine contract  
1017 administration.

1018 WATER CONSERVATION

1019 26. (a) Prior to the delivery of water provided from or conveyed through Federally  
1020 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be  
1021 implementing an effective water conservation and efficiency program based on the Contractor's  
1022 water conservation plan that has been determined by the Contracting Officer to meet the  
1023 conservation and efficiency criteria for evaluating water conservation plans established under  
1024 Federal law. The water conservation and efficiency program shall contain definite water  
1025 conservation objectives, appropriate economically feasible water conservation measures, and time  
1026 schedules for meeting those objectives. Continued Project Water delivery pursuant to this Contract  
1027 shall be contingent upon the Contractor's continued implementation of such water conservation  
1028 program. In the event the Contractor's water conservation plan or any revised water conservation  
1029 plan completed pursuant to subdivision (d) of Article 26 of this Contract have not yet been  
1030 determined by the Contracting Officer to meet such criteria, due to circumstances which the  
1031 Contracting Officer determines are beyond the control of the Contractor, water deliveries shall be  
1032 made under this Contract so long as the Contractor diligently works with the Contracting Officer to  
1033 obtain such determination at the earliest practicable date, and thereafter the Contractor immediately  
1034 begins implementing its water conservation and efficiency program in accordance with the time  
1035 schedules therein.

1036 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of  
1037 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement  
1038 the Best Management Practices identified by the time frames issued by the California Urban Water

1039 Conservation Council for such M&I Water unless any such practice is determined by the  
1040 Contracting Officer to be inappropriate for the Contractor.

1041 (c) The Contractor shall submit to the Contracting Officer a report on the status  
1042 of its implementation of the water conservation plan on the reporting dates specified in the then  
1043 existing conservation and efficiency criteria established under Federal law.

1044 (d) At five-year intervals, the Contractor shall revise its water conservation plan  
1045 to reflect the then current conservation and efficiency criteria for evaluating water conservation  
1046 plans established under Federal law and submit such revised water management plan to the  
1047 Contracting Officer for review and evaluation. The Contracting Officer will then determine if the  
1048 water conservation plan meets Reclamation's then current conservation and efficiency criteria for  
1049 evaluating water conservation plans established under Federal law.

1050 (e) If the Contractor is engaged in direct groundwater recharge, such activity  
1051 shall be described in the Contractor's water conservation plan.

1052 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1053 27. Except as specifically provided in Article 17 of this Contract, the provisions of this  
1054 Contract shall not be applicable to or affect non-Project water or water rights now owned or  
1055 hereafter acquired by the Contractor or any user of such water within the Contractor's Service Area.  
1056 Any such water shall not be considered Project Water under this Contract. In addition, this Contract  
1057 shall not be construed as limiting or curtailing any rights which the Contractor or any water user  
1058 within the Contractor's Service Area acquires or has available under any other contract pursuant to  
1059 Federal Reclamation law.

1060 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1061 28. (a) The O&M of a portion of the Project facilities which serve the Contractor,  
1062 and responsibility for funding a portion of the costs of such O&M, have been transferred to the San  
1063 Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement  
1064 (8-07-20-X0354) between the United States and the Operating Non-Federal Entity San Luis &  
1065 Delta-Mendota Water Authority. That separate agreement shall not interfere with or affect the  
1066 rights or obligations of the Contractor or the United States hereunder.

1067 (b) The Contracting Officer has previously notified the Contractor in writing that  
1068 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to the  
1069 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and therefore, the  
1070 Contractor shall pay directly to the Operating Non-Federal Entity San Luis & Delta-Mendota Water  
1071 Authority, or to any successor approved by the Contracting Officer under the terms and conditions  
1072 of the separate agreement between the United States and the Operating Non-Federal Entity San Luis  
1073 & Delta-Mendota Water Authority described in subdivision (a) of this Article, all rates, charges, or  
1074 assessments of any kind, including any assessment for reserve funds, which the Operating Non-  
1075 Federal Entity San Luis & Delta-Mendota Water Authority or such successor determines, sets, or  
1076 establishes for the O&M of the portion of the Project facilities operated and maintained by the  
1077 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor. Such  
1078 direct payments to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or  
1079 such successor shall not relieve the Contractor of its obligation to pay directly to the United States  
1080 the Contractor's share of the Project Rates, Charges, and Tiered Pricing Component except to the  
1081 extent the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority collects

1082 payments on behalf of the United States in accordance with the separate agreement identified in  
1083 subdivision (a) of this Article.

1084 (c) For so long as the O&M of any portion of the Project facilities serving the  
1085 Contractor is performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water  
1086 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the  
1087 Rates for Water Delivered under this Contract representing the cost associated with the activity  
1088 being performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority  
1089 or its successor.

1090 (d) In the event the O&M of the Project facilities operated and maintained by the  
1091 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the  
1092 United States during the term of this Contract, the Contracting Officer shall so notify the  
1093 Contractor, in writing, and present to the Contractor a revised Exhibit “B” which shall include the  
1094 portion of the Rates to be paid by the Contractor for Project Water under this Contract representing  
1095 the O&M costs of the portion of such Project facilities which have been re-assumed. The  
1096 Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to the  
1097 contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the revised Exhibit  
1098 “B” directly to the United States in compliance with Article 7 of this Contract.

1099 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1100 29. The expenditure or advance of any money or the performance of any obligation of  
1101 the United States under this Contract shall be contingent upon appropriation or allotment of funds.  
1102 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations  
1103 under this Contract. No liability shall accrue to the United States in case funds are not appropriated  
1104 or allotted.

1105 BOOKS, RECORDS, AND REPORTS

1106 30. (a) The Contractor shall establish and maintain accounts and other books and  
1107 records pertaining to administration of the terms and conditions of this Contract, including: the

1108 Contractor's financial transactions, water supply data, and Project land and right-of-way  
1109 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use  
1110 data; and other matters that the Contracting Officer may require. Reports thereon shall be furnished  
1111 to the Contracting Officer in such form and on such date or dates as the Contracting Officer may  
1112 require. Subject to applicable Federal laws and regulations, each party to this Contract shall have  
1113 the right during office hours to examine and make copies of the other party's books and records  
1114 relating to matters covered by this Contract.

1115 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,  
1116 records, or other information shall be requested from the Contractor by the Contracting Officer  
1117 unless such books, records, or information are reasonably related to the administration or  
1118 performance of this Contract. Any such request shall allow the Contractor a reasonable period of  
1119 time within which to provide the requested books, records, or information.

1120 (c) At such time as the Contractor provides information to the Contracting  
1121 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided to  
1122 the Operating Non-Federal Entity.

1123 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1124 31. (a) The provisions of this Contract shall apply to and bind the successors and  
1125 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1126 therein shall be valid until approved in writing by the Contracting Officer.

1127 (b) The assignment of any right or interest in this Contract by either party shall  
1128 not interfere with the rights or obligations of the other party to this Contract absent the written  
1129 concurrence of said other party.

1130 (c) The Contracting Officer shall not unreasonably condition or withhold  
1131 approval of any proposed assignment.

1132 SEVERABILITY

1133 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor  
1134 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an

1135 association or other form of organization whose primary function is to represent parties to Project  
1136 contracts, brings an action in a court of competent jurisdiction challenging the legality or  
1137 enforceability of a provision included in this Contract and said person, entity, association, or  
1138 organization obtains a final court decision holding that such provision is legally invalid or  
1139 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the  
1140 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court  
1141 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)  
1142 within three months thereafter promptly agree on the appropriate revision(s). The time periods  
1143 specified above may be extended by mutual agreement of the parties. Pending the completion of  
1144 the actions designated above, to the extent it can do so without violating any applicable provisions  
1145 of law, the United States shall continue to make the quantities of Project Water specified in this  
1146 Contract available to the Contractor pursuant to the provisions of this Contract which were not  
1147 found to be legally invalid or unenforceable in the final court decision.

1148 RESOLUTION OF DISPUTES

1149 33. Should any dispute arise concerning any provisions of this Contract, or the parties'  
1150 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the  
1151 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring  
1152 any matter to the Department of Justice, the party shall provide to the other party 30 days' written  
1153 notice of the intent to take such action; Provided, That such notice shall not be required where a  
1154 delay in commencing an action would prejudice the interests of the party that intends to file suit.  
1155 During the 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in  
1156 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to  
1157 waive or abridge any right or remedy that the Contractor or the United States may have.

1158

OFFICIALS NOT TO BENEFIT

1159           34.    No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1160 Contractor shall benefit from this Contract other than as a water user or landowner in the same  
1161 manner as other water users or landowners.

1162

CHANGES IN CONTRACTOR'S SERVICE AREA

1163           35.    (a)    While this Contract is in effect, no change may be made in the Contractor's  
1164 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,  
1165 except upon the Contracting Officer's written consent.

1166                   (b)    Within 30 days of receipt of a request for such a change, the Contracting  
1167 Officer will notify the Contractor of any additional information required by the Contracting Officer  
1168 for processing said request, and both parties will meet to establish a mutually agreeable schedule for  
1169 timely completion of the process. Such process will analyze whether the proposed change is likely  
1170 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability  
1171 of the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-  
1172 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project  
1173 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply  
1174 with the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the  
1175 Contracting Officer in this process, and such costs will be paid in accordance with Article 25 of this  
1176 Contract.

1177

FEDERAL LAWS

1178           36.    By entering into this Contract, the Contractor does not waive its rights to contest the  
1179 validity or application in connection with the performance of the terms and conditions of this  
1180 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the  
1181 terms and conditions of this Contract unless and until relief from application of such Federal law or

1182 regulation to the implementing provision of the Contract is granted by a court of competent  
1183 jurisdiction.

1184 NOTICES

1185 37. Any notice, demand, or request authorized or required by this Contract shall be  
1186 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered  
1187 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, California  
1188 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board  
1189 of Directors of the Widren Water District, P. O. Box 1365, Los Banos, California 93635. The  
1190 designation of the addressee or the address may be changed by notice given in the same manner as  
1191 provided in this Article for other notices.

1192 CONFIRMATION OF CONTRACT

1193 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a  
1194 decree of a court of competent jurisdiction of the State of California, confirming the execution of  
1195 this Contract. The Contractor shall furnish the United States a certified copy of the final decree, the  
1196 validation proceedings, and all pertinent supporting records of the court approving and confirming  
1197 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1198 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and  
1199 year first above written.

1200 THE UNITED STATES OF AMERICA

1201 By: \_\_\_\_\_  
1202 Regional Director, Mid-Pacific Region  
1203 Bureau of Reclamation

1204 (SEAL)

1205 WIDREN WATER DISTRICT

1206 By: \_\_\_\_\_  
1207 President of the Board of Directors

1208 Attest:

1209 By: \_\_\_\_\_  
1210 Secretary of the Board of Directors

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EXHIBIT A

[Map or Description of Service Area]

EXHIBIT B  
WIDREN WATER DISTRICT  
Water Rates and Charges

Note: Rates and Charges are 2004 rates. This exhibit will be updated prior to execution of the contract to reflect the current Rates and Charges.

<u>COST-OF-SERVICE RATES:</u>	<u>2004 Rates per Acre-Foot</u>	
	<u>Irrigation</u> <u>Water</u>	<u>M&amp;I</u> <u>Water 1/</u>
Capital Rates	\$10.78	
O&M Rates:		
Water Marketing	7.59	
Storage	5.83	
Conveyance		
Conveyance Pumping		
Deficit Rates:		
Non-Interest Bearing		
Interest Bearing	1.66	
CFO/PFR Adj. Rate 2/	<u>2.11</u>	
TOTAL COST-OF-SERVICE-RATES	<u>\$27.97</u>	<u>1/</u>
 <u>FULL-COST RATES</u>		
<u>Section 202(3)</u> Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	<u>\$41.87</u>	
<u>Section 205(a)(3)</u> Rate is applicable to a Limited Recipient that did <u>not</u> receive irrigation water on or before October 1, 1981.	<u>\$48.98</u>	
 <u>CHARGES UNDER P.L. 102-575 TO RESTORATION FUND 3/</u>		
Restoration Payments (3407(d)(2)(A))	<u>\$ 7.82</u>	<u>\$15.64</u>

1/ To be provided as needed. Contractor does not currently receive M&I water and is not projected to take any in the near future.

2/ Rate represents Chief Financial Officers (CFO) adjustment and Provision for Replacement (PFR) credit for option 2 cost deferment to be distributed over 5-year period beginning with 2003 water rates.

3/ Restoration fund charges are payments in addition to the water rates and were determined pursuant to Title XXXIV of Public Law 102-575. Restoration fund charges are on a fiscal year basis (10/1-9/30).

